

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**NOV 10 2008**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 6026**  
**DATE COMPLAINT FILED: 6/18/2008**  
**DATE OF NOTIFICATIONS: 6/25/2008;**  
**8/22/2008**  
**LAST RESPONSE RECEIVED: 9/4/2008**  
**DATE ACTIVATED: 8/12/2008**  
**EXPIRATION OF SOL: 1/1/2010**

**COMPLAINANT:**

**Michael Zahara**

**RESPONDENTS:**

**Jan Churchill**  
**Nevada State Democratic Party and Jan Churchill,**  
**in her official capacity as Treasurer**  
**Berkley for Congress and Linda L. Goldberg, in her**  
**official capacity as Treasurer**

**RELEVANT STATUTES:**

**2 U.S.C. § 432(b)(1)-(3)**  
**2 U.S.C. § 432(c)**  
**2 U.S.C. § 434(b)(2)-(4), (6)**  
**2 U.S.C. § 441a(a)(1)**  
**2 U.S.C. § 441a(f)**  
**11 C.F.R. § 102.15**  
**11 C.F.R. § 104.3(a)-(b)**  
**11 C.F.R. § 104.14(d)**  
**11 C.F.R. § 113.1(g)**

**INTERNAL REPORTS CHECKED:**

**Federal Disclosure Reports**

**FEDERAL AGENCIES CHECKED:**

**None**

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**I. INTRODUCTION**

Complainant Michael Zahara, a former Nevada State Democratic Party ("NSDP") board member, alleges that Jan Churchill, Treasurer of the NSDP and staffer for U.S. Representative Shelley Berkley, violated the Federal Election Campaign Act, as amended ("the Act"), when she paid herself a salary and reimbursed herself for travel expenses with state party funds without approval from the NSDP or the Clark County Democratic Central Committee ("CCDC"), a state committee. Complainant claims that the salary payments and travel reimbursements are in contravention of the bylaws and charter of the NSDP and constitute embezzlement.

Additionally, Complainant alleges that Ms. Churchill has accepted, at her home address, contributions to the NSDP from Representative Berkley instead of having the contributions sent to official NSDP offices. Complainant contends that this is improper because Ms. Churchill acts as both Treasurer of the NSDP and CCDC as well as an employee of Representative Shelley Berkley.

Finally, Complainant alleges that it is a conflict of interest for Ms. Churchill to be employed by the NSDC, CCDC, and Representative Berkley, and that this simultaneous employment leads to the "indelible impression" that party money is being used to "the express benefit" of Representative Berkley and/or her donors. Complainant states that the "hefty donations" from Representative Berkley to the state and local party committees "leaves an impression" that Representative Berkley is subsidizing Ms. Churchill's unauthorized salary and travel reimbursements.

The NSDP and Ms. Churchill assert that the payments were legitimate salary payments and travel reimbursements, and that there is no allegation that the salary payments were in excess of the work performed or that the travel reimbursements were not in connection with NSDP

1 events.<sup>1</sup> Respondents maintain that while Ms. Churchill is currently receiving a salary, it is  
2 commensurate with her duties. The Respondents also state that the travel reimbursements were  
3 made in connection with a compliance training event held by the Federal Election Commission.<sup>2</sup>  
4 Finally, Respondents contend that while the allegations of NSDP charter and bylaw violations are  
5 false, these allegations are outside of the jurisdiction of the FEC.

6 As discussed below, it does not appear that Ms. Churchill embezzled funds from the  
7 Nevada State Democratic Party, and therefore we recommend that the Commission find no  
8 reason to believe that Ms. Churchill violated 2 U.S.C. §§ 432(b)(3) by commingling NSDP and  
9 personal funds, or that the NSDP and Jan Churchill, in her official capacity as Treasurer, violated  
10 2 U.S.C. §§ 432(c) and 434(b) by failing to maintain adequate records or report salary payments  
11 and travel reimbursements in connection with Ms. Churchill's alleged embezzlement. In  
12 addition, the NSDP does not appear to have violated the Act by receiving campaign contributions  
13 at Ms. Churchill's home address, and thus we recommend that the Commission find no reason to  
14 believe that the NSDP and Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C.  
15 §§ 432(b) or 432(c). Finally, we recommend that the Commission find no reason to believe that  
16 Berkley for Congress and Linda Goldberg, in her official capacity as Treasurer ("Berkley for  
17 Congress"), violated 2 U.S.C. § 441a(a)(1) by making excessive contributions, or that the  
18 Nevada State Democratic Party violated 2 U.S.C. § 441a(f) by knowingly receiving these  
19 excessive contributions.

<sup>1</sup> Berkley for Congress and Treasurer Linda Goldberg did not respond.

<sup>2</sup> While it is unclear which FEC training program Ms. Churchill attended, there were several held by the FEC in 2007 around the time the travel reimbursements were reported in the NSDP's 2007 November Monthly Report: Washington, DC (May 10-11); Denver (June 20-21); Phoenix (June 26-27); Atlanta (July 16-17); and Seattle (September 26-27)). See <http://www.fec.gov/calendar/calendar.shtml>.

**II. LEGAL ANALYSIS**

**A. Embezzlement**

Complainant alleges that Ms. Churchill distributed money to herself from NSDP and CCDC accounts without authorization. The Act prohibits the commingling of committee funds with "the personal funds of any individual," including officers of a committee. 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. The Commission has previously found that individuals violated § 432(b)(3) where they misappropriated committee funds by making unauthorized disbursements to themselves and commingled committee funds with personal funds. See MUR 5923 (American Dream PAC) (Commission accepted conciliation agreement where embezzler diverted PAC funds into own bank account); MUR 5971 (Mary Jennifer Adams) (Commission found reason to believe embezzler knowingly and willfully violated the commingling and personal use statutes where she deposited committee funds into her personal bank account); cf. Pre-MUR 463 (PAT PAC) (Commission declined to pursue embezzlement involving physical commingling of committee and personal funds because the amount at issue was small and the embezzler was being prosecuted by criminal authorities).

Here, Ms. Churchill received periodic payments from NSDP.<sup>3</sup> According to FEC filings, the NSDP made 43 bi-monthly disbursements to Ms. Churchill from December 30, 2005 until July 31, 2007. The disbursements totaled \$25,168.79, and each individual disbursement ranged from \$571.58 to \$572.25. Ms. Churchill also received two payments on October 5, 2007 from the NSDP, totaling \$338.25, for "Travel Expenses." In separate responses, Ms. Churchill and the

<sup>3</sup> Ms. Churchill also received salary disbursements from Rep. Shelley Berkley. See Janet D Churchill, Congressional Staffer, *Salary Data*, retrieved from [http://www.legistorm.com/person/Janet\\_D\\_Churchill/10552.html](http://www.legistorm.com/person/Janet_D_Churchill/10552.html). In 2007, Ms. Churchill was paid \$53,412.54. In 2006 she was paid \$51,272.28, and in 2005 Ms. Churchill was paid \$48,177.00.

1 NSDP state that these disbursements were for legitimate salary payments and travel  
2 reimbursements.

3 Complainant alleges that the payments were unauthorized based in large part on the  
4 NSDP Charter and Bylaws and the Nevada Revised Statutes, which he contends prohibit such  
5 payments. However, it is unclear that these documents in fact prohibit salary payments and  
6 travel reimbursements. The NSDP Charter states that it is a conflict of interest for a paid  
7 employee, contractor, or consultant of the NSDP to serve as treasurer in the party committee. *See*  
8 *Charter of the Democratic Party of Nevada*, Article III § 12, available at  
9 [http://www.nvdems.com/images/nsdp\\_charter-february2008.pdf](http://www.nvdems.com/images/nsdp_charter-february2008.pdf). The Bylaws of the NSDP do  
10 not mention payments to the treasurer. *See Democratic Party of Nevada Bylaws*, available at  
11 [http://www.nvdems.com/images/nsdp\\_bylaws-february2008.pdf](http://www.nvdems.com/images/nsdp_bylaws-february2008.pdf). The Nevada Revised Statutes  
12 require only that the state central party committees elect executive officers from the committee's  
13 membership, and that these officers serve "as provided in the bylaws and regulations of the  
14 central committee." *See Nev. Rev. Stat. § 293.160 (2008).*

15 Even if the NSDP Charter deems it a conflict of interest for the treasurer to receive a  
16 salary or stipend, these payments would not violate the Act's embezzlement provisions unless the  
17 NSDP did not know about or approve them. As noted above, both the NSDP and Ms. Churchill  
18 assert that the payments were for legitimate committee expenses, and therefore we recommend  
19 that the Commission find no reason to believe that Jan Churchill violated 2 U.S.C. §§ 432(b)(3).  
20 Moreover, because there is no allegation or information suggesting that that the committee failed  
21 to maintain adequate records or report salary payments and travel reimbursements to Ms.  
22 Churchill, we recommend that the Commission find no reason to believe that Nevada State

Democratic Party and Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C. §§ 432(c) and 434(b).

### **B. Receipt of Contributions at Home**

Complainant further alleges that Ms. Churchill received contributions from Representative Berkley to the NSDP at her home address, rather than at NSDP offices. There is no specific statute or regulation, however, governing contributions to state and local political committees sent to the treasurer's home address. Under 2 U.S.C. § 432(b)(1)-(3), all contributions received by an authorized committee must be given to the treasurer, and must be segregated from individual funds with no commingling. Similarly, 2 U.S.C. § 432(c) requires the committee treasurer to keep accurate records of contributions. Here, there is no allegation that Ms. Churchill commingled contributions received from Representative Berkley with her personal funds, nor does the complaint allege that Ms. Churchill kept inaccurate records of these contributions. Therefore, we recommend that the Commission find no reason to believe that the Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C. §§ 432(b) or 432(c).

### **C. Excessive Contributions**

Finally, Complainant asserts that the "hefty donations" from Representative Berkley to the state and local party committees "leaves an impression" that Representative Berkley is subsidizing Ms. Churchill's unauthorized salary and travel reimbursements. This allegation, although vague, appears to attempt to allege that Representative Berkley or her committee made, and the NSDP received, excessive contributions.

According to FEC disclosure reports, Berkley for Congress has contributed \$415,725.00 to the NSDP since 2006, including \$190,000 in 2008, \$25,000 in 2007, and \$200,725 in 2006.

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1 Since 2002, the first year of contributions, Representative Berkley's committee has donated over  
2 \$670,000. Representative Berkley, however, did not make any personal contributions to the  
3 NSDP.

4 Under 2 U.S.C. § 439a(a)(4), a candidate's principal committee may transfer unlimited  
5 funds to state or local party committees. *See also* 11 C.F.R. § 113.2(c); AO 2004-22 (Bereuter  
6 for Congress). Therefore, because contributions from Berkley for Congress were not excessive,  
7 we recommend that the Commission find no reason to believe that Berkley for Congress and  
8 Linda Goldberg, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1), or the  
9 Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer, violated  
10 2 U.S.C. § 441a(f).

11 **III. RECOMMENDATIONS**

- 12 1. Find no reason to believe that Jan Churchill violated 2 U.S.C. §§ 432(b)(3).
- 13 2. Find no reason to believe that the Nevada State Democratic Party and Jan Churchill, in  
14 her official capacity as Treasurer, violated 2 U.S.C. §§ 432(c) and 434(b).
- 15 3. Find no reason to believe that the Nevada State Democratic Party and Jan Churchill, in  
16 her official capacity as Treasurer, violated 2 U.S.C. §§ 432(b) or 432(c).
- 17 4. Find no reason to believe that Berkley for Congress and Linda Goldberg, in her official  
18 capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1).
- 19 5. Find no reason to believe that the Nevada State Democratic Party and Jan Churchill, in  
20 her official capacity as Treasurer, violated 2 U.S.C. § 441a(f).
- 21 6. Approve the attached Factual and Legal Analyses;
- 22 7. Approve the appropriate letters; and

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8. Close the file.

11/10/08  
Date

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